IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12240 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESH A PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12240 of 2000

MR SHALIN MEHTA for Petitioner No. 1

MR PRADEEP D BHATE AGP for Respondent No. 1-2

MR PRADEEP PATEL for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/08/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the action

of the respondent authorities treating the seniority of the petitioner in the cadre of Junior Clerk from 06/11/1979 and to direct the respondent authorities to consider the case of the petitioner for promotion to the post of Sales Tax Inspector, on the basis of seniority of the petitioner from 23/05/1979 along with all consequential benefits.

2.0 The petitioner was appointed as a Junior Clerk in the office of the Mamlatdar, Kheralu by the respondent authorities by order dated 18/05/1979 and he joined the services on 23/05/1979. After completing the pre-service training, the petitioner was posted to the Sales Tax Department on administrative ground by order dated 05/11/1981. At the relevant time, the candidates, though in service, were asked to submit leave reports to attain pre-service training. Since the petitioner did not have sufficient leave to his credit, the period from 27/08/1981 to 06/11/1981 was ordered to be considered as leave without pay and the same was regularized subsequently by order of the Collector dated 07/09/1982.

2.1 The name of the petitioner figured in the seniority lists for the cadre of Junior Clerk as well as Senior Clerk from time to time and his name was also shown at appropriate place considering his date of joining as 23/05/1979. But, due to some vested interests in the Sales Tax Department with the connivance of the respondent authorities, the name of the petitioner was pushed down in the seniority list. Feeling aggrieved by the said action of the respondent authorities the petitioner has preferred this petition before this Court.

3.0 Mr.Shalin Mehta learned advocate for the petitioner has submitted that the petitioner was appointed and was absorbed in the Sales Tax Department, pursuant to the order dated 07/09/1982 and that his seniority was maintained as per the G.A.D. Resolution dated 18/10/1967 at Annexure `C' to the petition, which was also accepted by the respondent authorities. He has further submitted that in the seniority list prepared by the Department, the name of the petitioner was shown at appropriate level from time to time considering his seniority from his date of joining service i.e. 23/05/1979. Therefore, the seniority of the petitioner should have been considered from 23/05/1979 and promotion should have been given as per the said seniority list.

3.1 Mr.Mehta for the petitioner has relied upon a decision of the Apex Court in the case of Malcom Lawrence Cecil D'Souza v. Union of India & ors. reported in A.I.R. 1975 S.C. 1269. Paras 8 & 9 of the said

decision are relevant, which read as under;

"8. The matter can also be looked at from angle. The seniority of the petitioner qua respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 Rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in 1971 in pursuance of the decision of this Court in Karnik's case A.I.R. 1970 SC 2092 (supra) would not clothe the petitioner with a fresh right to challenge the fixation of his seniority qua respondent 4 to 26 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years. It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress."

"9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects. It should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Baking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would,

therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

3.2 Mr.Mehta has also relied upon a decision of the Apex Court in case of Bimlesh Tanwar v. State of Haryana & ors. reported in (2003) 5 S.C.C. 604 and more particularly on Para 54 of the said decision, which reads as under;

"54. Furthermore, it is now well settled that a settled seniority position should not be unsettled. The respondents had already been posted to the post of Additional District Judge. As would appear from the report of the Sub-Committee that the seniority list was published in the year 1992. Representations were, however, made only in the year 1997 which was rejected by the High Court on 22/08/97. The writ petition was filed in March 1998 which was dismissed by reason of the impugned judgment dated 18/08/99."

3.3 Mr.Mehta has also relied upon a decision in the case of Pavanendra Narayan Verma v. Sanjay Gandhi P.G.I. of Medical Sciences & Anr. reported in (2002) 1 S.C.C. 520 and more particularly on Para 34, which reads as under;

"34. That an affidavit cannot be relied on to improve or supplement an order has been held by a Constitution Bench in Mohinder Singh Gill v. Chief Election Commr., New Delhi : (SCC p.417, para 8)

"[W]hen a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise."

4.0 Mr.P D Bhate learned AGP has submitted that the order passed by the Collector was contrary to the Rules and therefore in view of the Government Circular dated 18/05/1978, the petitioner was not entitled for the benefits which were given to him by mistake.

5.0 Mr.Joshi learned advocate for Mr.Pradeep Patel for respondent no.3 has submitted that respondent no.3 has limited powers with respect to the vacation of interim relief and therefore he has stated that he had nothing to say with respect to the merits of the case.

6.0 I have heard the learned advocates for the parties and have gone through the documents produced on record. By order dated 05/11/1981 the petitioner was posted to the Sales Tax Department and the ground given by the respondent authorities for such placement was `public interest'. Even the Collector had directed the respondent authorities by order dated 07/09/1982 to count and regularize the service of the petitioner. But, in the affidavit in reply filed by the respondents it is stated that the placement was given to the petitioner at his own request and therefore his seniority could not be considered for the purpose of promotion.

6.1 The respondents have accepted the order of the Collector dated 07/09/1982 and as per the said order the petitioner was absorbed in the Department. Not only that, in the year 1991, the petitioner was also promoted to the post of Senior Clerk. Therefore, almost after 18 years, the respondent authorities cannot disturb the seniority of the petitioner. Moreover, as per the law laid down by the Apex Court in the aforesaid decisions, the seniority of the petitioner cannot be disturbed by the respondent authorities. Thus, from the record, it is clear that the respondents have considered the petitioner as a Junior Clerk from 23/05/1979, which cannot be disturbed after a long time.

7.0 In that view of the matter, the petition is allowed. The order of the respondent authorities treating the petitioner's seniority from 06/11/1981 is quashed and set aside.

7.1 The respondent authorities are directed to consider the case of the petitioner as per his seniority from 23/05/1979 i.e. from his date of joining the service. The respondent authorities will consider the case of the petitioner for promotion, as if he was appointed as a Junior Clerk from 23/05/1979 and will give the petitioner all consequential benefits with the deemed date of promotion to the post of Sales Tax Inspector from the date on which his juniors are promoted. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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